



COURT FILE NUMBER B301-163430

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

COM  
Jan 22, 2025

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, C C-8, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CLEO ENERGY CORP.

DOCUMENT BENCH BRIEF OF CLEO ENERGY CORP.

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
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File No.: G10010664

**Attention: Sam Gabor/ Tom Cumming**

**APPLICATION BEFORE THE HONOURABLE  
ASSOCIATE CHIEF JUSTICE NEILSON  
JANUARY 22, 2025 AT 3:00 PM ON THE CALGARY COMMERCIAL LIST  
VIA WEBEX**

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## **PART 1 - INTRODUCTION**

1. This Bench Brief is submitted on behalf of the Applicant, Cleo Energy Corp. (“**Cleo**” or the “**Applicant**”).
2. In this Application, Cleo is seeking from this Honourable Court an Order that provides as follows:
  - (a) abridging the time for service of notice of this Application, deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
  - (b) approving Cleo’s proposed sale and solicitation process (“**Sale Process**”), substantially in the form attached as **Appendix “A”** to the Order, and declaring the Sale Process to be commercially reasonable;
  - (c) authorizing and directing the Proposal Trustee, with the assistance of Cleo and Sayer, to conduct the Sale Process and do all things reasonably necessary to give full effect thereto; and
  - (d) such further and other relief as the Applicants may request and this Honourable Court may grant.

## **PART 2 - FACTS AND BACKGROUND**

### *Cleo and the Proposal Proceedings*

3. Cleo’s application is supported by an Affidavit sworn by Chris Lewis on January 20, 2025<sup>1</sup> (the “**Lewis Affidavit**”) and by the second report dated January 20, 2025 (the “**Second Report**”) of Alvarez & Marsal Canada Inc. (“**A&M**”), the proposal trustee (the “**Proposal Trustee**”) of Cleo. All capitalized terms not otherwise defined in this Bench Brief shall have the meaning given to them in the Lewis Affidavit.

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<sup>1</sup> Affidavit of Chris Lewis, sworn January 20, 2025 [the “**Lewis Affidavit**”].

4. On December 8, 2024 Cleo filed a notice of intention to make a proposal (a “**NOI**”) under Section 50.4 of Division I of Part III of the *BIA* with the Office of the Superintendent of Bankruptcy (the “**OSB**”, and the proceedings commenced thereby, the “**Proposal Proceedings**”). Alvarez & Marsal Canada Inc. (“**A&M**”) was named as proposal trustee (the “**Proposal Trustee**”).<sup>2</sup>
5. Cleo is a privately owned oil and gas operator of medium gravity oil based in Calgary, Alberta with operations throughout East Central Alberta. Cleo has been operating since its incorporation in 2016. Cleo’s shares are held entirely by its parent corporation Chimera Management Group Ltd., a holding corporation. Cleo does not own shares in any other corporation.<sup>3</sup>
6. Cleo’s revenue is primarily linked to the productivity of its wells, as well as the market price of oil.<sup>4</sup>
7. Cleo has recently experienced a significant reduction in production levels due to several factors, including:
  - (a) lack of repair and maintenance required at several of its main producing fields causing shut ins of wells;
  - (b) shut downs of its oil producing assets following verbal directives issued to Cleo by the Alberta Energy Regulator (“**AER**”);
  - (c) thefts and vandalism at its oil and gas fields causing shutdowns over time and a recent complete shut down of Cleo’s largest oil and gas field; and
  - (d) lower prices obtained by Cleo for its oil and gas production.<sup>5</sup>

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<sup>2</sup> *Lewis Affidavit* at para 10.

<sup>3</sup> *Lewis Affidavit*, at para 6.

<sup>4</sup> *Lewis Affidavit*, at para 7.

<sup>5</sup> *Lewis Affidavit*, at para 8.

As a result of these issues, Cleo is currently unable to meet its obligations as they become due and its liabilities exceed its assets.<sup>6</sup>

8. Cleo has total indebtedness of approximately \$24,102,898,<sup>7</sup> of which approximately \$6.7 million is secured indebtedness owing to a number of secured creditors.<sup>8</sup>

### *Sale Process*

9. Cleo and the Proposal Trustee have developed the Sale Process under which Cleo will market and attempt to sell its Property with the advice of and in consultation with the Proposal Trustee. Cleo has also engaged Sayer Energy Advisors (“**Sayer**”) as its sales agent and to provide assistance and advice to Cleo and the Proposal Trustee in the conduct of the Sale Process.<sup>9</sup>
10. In preparation for the launch of the Sale Process, Cleo and Sayer, in consultation with the Proposal Trustee, have compiled a list of potential strategic and financial bidders (“**Potential Bidders**”), set up a virtual data room (the “**VDR**”) in which due diligence documents and information pertaining to Cleo’s business, operations and property are being deposited, prepared a teaser letter describing the Sale Process and inviting Potential Bidders to participate therein (the “**Teaser**”), and prepared the templates of a non-disclosure agreement (an “**NDA**”), a non-binding letter of intent (a “**Non-Binding LOI**”) and asset purchase agreement (a “**Template APA**”). Should this Honourable Court grant the relief sought, Sayer and the Company will send the Teaser and Sale Process to Potential Bidders and Sayer will publish notices of the Sale Process in the Daily Oil Bulletin, Insolvency Insider and any other publications or newswires identified by the Proposal Trustee.
11. The Sale Process contemplates a two phase marketing process with the following milestones, which can be altered in the discretion of the Proposal Trustee:

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<sup>6</sup> *Lewis Affidavit*, at para 8.

<sup>7</sup> *Lewis Affidavit*, at para 9.

<sup>8</sup> *Lewis Affidavit*, at para 9.

<sup>9</sup> *Lewis Affidavit*, at para 13.

- (a) a commencement date of January 22, 2025;
  - (b) a Non-Binding LOI Submission Date of February 25, 2025;
  - (c) a Binding Bid Submission Date of March 13, 2025;
  - (d) a Bid Approval Application, where Cleo will seek the approval of the Court for one or more proposed transactions, in the week of March 24, 2025 (or as soon thereafter as court time can be confirmed);
  - (e) a Target Closing Date of March 31, 2025, or 3 days after Court approval is obtained; and
  - (f) an Outside Date of April 18, 2025.
12. In the first phase of the Sale Process, the Proposal Trustee, Cleo and Sayer will send the Teasers to Potential Bidders to make them aware of the Sale Process. Potential Bidders who sign NDAs are given access to the Virtual Data Room in order to carry out due diligence.
13. Any Potential Bidder interested in bidding on Property must submit a Non-Binding LOI by no later than the Non-Binding LOI Submission Date. The Non-Binding LOI must comply with the requirements set out in paragraph 23 of the Sale Process, including setting out the proposed structure of the consideration payable under the proposed transaction, providing sufficient disclosure of their financial condition and credit quality (or enhancements) so as to allow the Proposal Trustee to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate such transaction, and confirming that the Potential Bidder satisfies AER requirements for holding licenses.
14. Following the Non-Binding LOI Submission Date, the Proposal Trustee, in consultation with Cleo and Sayer, will review each Non-Binding LOI to determine whether the Potential Bidder has complied with the requirements of paragraph 23 of the Sale Process, has a bona fide interest in concluding a transaction, and has the financial wherewithal to conclude a transaction. Provided that the Proposal Trustee determines these requirements are satisfied, such Potential Bidder will be designated a qualified bidder (a "**Qualified Bidder**"),

whereupon it can advance to the second phase. If the Proposal Trustee concludes that no Qualified LOI is likely to result in a Successful Bid, the Proposal Trustee, in consultation with Cleo and Sayer, may terminate the Sale Process.

15. In the second phase, Qualified Bidders may carry out additional due diligence. In the second phase, a Qualified Bidder must submit a binding basis in the form of the template asset purchase agreement (a “**Qualified Bid**”) included in the Virtual Data Room which complies with the requirements set out in paragraph 28 of the Sale Process by no later than the Binding Bid Submission Date. These requirements include:
- (a) submitting a deposit in an amount equal to 15% of the proposed cash consideration contemplated by the Qualified Bid, which will become non-refundable upon the Qualified Bid becoming a Successful Bid (other than in the circumstances contemplated in the Successful Bid);
  - (b) evidence of financial wherewithal to complete the transaction;
  - (c) the Qualified Bid cannot be conditional on internal approvals, the outcome of any unperformed due diligence, or obtaining financing;
  - (d) the Qualified Bid and transaction contemplated thereby must be in compliance with AER requirements; and
  - (e) the Qualified Bid must disclaim any break-up or similar fees.

The transaction contemplated by the Qualified Bid must be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description, other than as specifically included in the definitive documents.

16. Following the Binding Bid Submission Date, the Proposal Trustee, in consultation with Cleo and Sayer, will review each Qualified Bid to determine if they comply with the requirements of paragraph 28 of the Sale Process, the adequacy of the proposed consideration, and whether the proposed transaction is in the best interests of Cleo, considering, among other things, the criteria set out in paragraph 29 of the Sale Process. The Proposal Trustee seek clarification of the proposed terms from, and negotiate the terms

with, and seek a revised Qualified Bid from the Qualified Bidder. The Proposal Trustee, in consultation with Cleo and Sayer, may but is not obligated to select the highest or best Qualified Bid(s) (each, a “**Successful Bid**”, and such Qualified Bidder, the “**Successful Bidder**”) and designate any back-up bids. If the Proposal Trustee determines that no Qualified Bid is likely to result in a Successful Bid, the Proposal Trustee may terminate the Sale Process.

17. Once one or more Successful Bids have been determined, Cleo or the Proposal Trustee will apply to this Honourable Court for an Order approving the Successful Bid(s), authorizing Cleo to enter into any agreements required to implement the Successful Bid(s) and, if applicable, vesting the Property subject thereto in the Successful Bidder(s) free and clear of all encumbrances. The Sale Process contemplates that the transaction(s) contemplated by the Successful Bid(s) will close by the Target Closing Date, and in any event by no later than the Outside Date.
18. Additional facts supporting the relief sought on this Application are more particularly set out in the Lewis Affidavit.

### **PART 3 - ISSUES**

19. This Brief addresses whether this Honourable Court should approve the Applicant’s Sale Process.

### **PART 4 - LAW AND ARGUMENT**

#### **A. The Sale Process should be ratified and approved**

20. While the BIA does not mandate the form of a sale solicitation process, Courts in decisions under the *Companies Creditors Arrangement Act* have considered whether or not to approve a sale process. In *Nortel Networks Corporation (Re)* (“**Nortel**”),<sup>10</sup> the factors adopted by the Court included:

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<sup>10</sup> *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC) [Tab 1]



- (a) whether a sale transaction was warranted at this time;
- (b) whether a sale would benefit the whole “economic community”;
- (c) whether any creditors would have a *bona fide* reason to object to a sale of the business; and
- (d) whether there is a viable alternative.<sup>11</sup>

21. In *Walter Energy Canada Holdings, Inc. (Re)*, Justice Fitzpatrick wrote that in reviewing a proposed sale process, the court should consider (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>12</sup> In making this determination, Justice Fitzpatrick considered whether the time lines were reasonable, whether there was a need to move quickly to preserve cash resources pending a sale or investment, and whether sufficient flexibility was built into the sale process to allow the person conducting it to amend the timelines if circumstances justified it. She also considered whether the sale process was consistent with similar sale processes approved in other Canadian insolvency proceedings.<sup>13</sup>
22. In determining whether to approve a sale under section 65.13 of the BIA, a court will consider, among other things, (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances, and (b) whether the proposal trustee approved the process leading to the proposed sale or disposition.<sup>14</sup> Similarly, the criteria applied by courts referring to the test in *Royal Bank of Canada v Soundair Corp* includes (i) whether the receiver has made sufficient effort has been made to get the best price and

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<sup>11</sup> *Nortel*, at para 49.

<sup>12</sup> *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 (CanLII), at para 20 [Tab 2]

<sup>13</sup> *Ibid*, at paras 22 and 23 [Tab 2].

<sup>14</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, section 65.13(4) [Tab 3].

has not acted improvidently, and (ii) the efficacy and integrity of the process by which offers are obtained.<sup>15</sup>

23. Cleo submits that the Sale Process satisfies the criteria set out above:

- (a) because of Cleo's limited working capital, the Sale Process provides the only avenue available for either selling the Property on a going concern basis or restructuring Cleo;<sup>16</sup>
- (b) while the time lines are compressed, this is necessary because of Cleo's limited working capital, but both the Proposal Trustee and Sayer have expressed the view that adequate time is given to Potential Bidders to carry out due diligence and submit Non-Binding LOI's and ultimately Qualified Bids;<sup>17</sup>
- (c) if the Property is not sold, the Property may have to be surrendered to the Orphan Well Association, which would be contrary to the interests of the public;<sup>18</sup>
- (d) the Proposal Trustee will be intimately involved in the Sale Process and will ultimately determine, in consultation with Cleo and Sayer, the Qualified Bidders who are permitted to advance to the second phase, and which Bid(s) is a Successful Bid(s);<sup>19</sup>
- (e) the Sale Process is fair and transparent and gives all Potential Bidders equal access to information on Cleo and its Property and an opportunity to submit Bids and are able to participate in the Sale Process on a level playing field;<sup>20</sup>
- (f) the Proposal Trustee and Sayer have significant expertise and experience with insolvent oil and gas producers and marketing and selling their assets, which will

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<sup>15</sup> *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA), at para 16 [**Tab 4**]

<sup>16</sup> *Lewis Affidavit*, paras 24-26

<sup>17</sup> *Lewis Affidavit*, para 26; Second Report, paras 32(b) & 33

<sup>18</sup> *Lewis Affidavit*, para 27

<sup>19</sup> *Lewis Affidavit*, paras 19 & 21

<sup>20</sup> Second Report, para 32(a)

greatly enhance the prospects of one or more successful sales and provide creditors and other stakeholders with confidence in the process;<sup>21</sup>

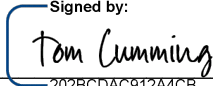
- (g) the Proposal Trustee working with Cleo in developing the Sale Process, will be consulted and involved in the conduct of the Sale Process, believes it is the best option for Cleo to preserve the value of its business and continue as a going concern and has recommended to this Honourable Court that it approve the Sale Process;<sup>22</sup>
- (h) creditors and other stakeholders are likely to derive a greater benefit from going concern sales under the Sale Process than a pure liquidation in a bankruptcy, and therefore any such sale is likely to be in the best interests of the creditors and other stakeholders of Cleo;<sup>23</sup> and
- (i) the proposed Sale Process is designed to facilitate a broad market solicitation of the Property and the business as a whole under the supervision of the Proposal Trustee and with the assistance of Sayer in a fair, open and transparent manner.<sup>24</sup>

## PART 5 - CONCLUSION AND RELIEF SOUGHT

24. For the reasons above, the Applicant requests the Order approving the Sale Process be granted as it is fair, necessary and reasonable in the circumstances and represents the best option to permit Cleo to realize maximum value for its Property, to the benefit of its creditors and other stakeholders.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of January, 2025.**

**GOWLING WLG (CANADA) LLP**

Per:  Signed by:  
 202BCDAC912A4CB...  
 Sam Gabor/Tom Cumming  
 Counsel for the Applicant

<sup>21</sup> Second Report, para 32(c)

<sup>22</sup> Second Report, paras 22 & 34

<sup>23</sup> *Lewis Affidavit*, para 27

<sup>24</sup> Second Report, para 24

## TABLE OF AUTHORITIES

Tab	Authority
1.	<a href="#"><u><i>Nortel Networks Corporation (Re)</i>, 2009 CanLII 39492 (ON SC)</u></a>
2.	<a href="#"><u><i>Walter Energy Canada Holdings, Inc. (Re)</i>, 2016 BCSC 107 (CanLII)</u></a>
3.	<a href="#"><u><i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3</u></a>
4.	<a href="#"><u><i>Royal Bank of Canada v Soundair Corp</i>, 1991 CanLII 2727 (ON CA)</u></a>